

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

05-cr-495-02(JGK)

- against-

MEMORANDUM OPINION
AND ORDER

JAIME LONDONO,

Defendant.

JOHN G. KOELTL, District Judge:

The Court *sua sponte* requested the Government to report to the Court whether the defendant, Jaime Londono, is eligible for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2).

Recent amendments to the U.S. Sentencing Guidelines have generally reduced the Guidelines for substance abuse offenses by two levels. See *id.*; Dillon v. United States, 560 U.S. 817, 820-22 (2010). Pursuant to these amendments, a defendant's sentence may only be reduced when "such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). A defendant is ineligible for a sentencing reduction if an amendment does not have the effect of lowering the defendant's applicable guideline range. See U.S.S.G. § 1B.10(a)(2)(B).

The Government contends that the defendant is not eligible for a sentence reduction because his Guidelines range does not

change as a result of the amendments. The defendant has not moved to reduce his sentence.

At a sentencing hearing on May 30, 2008, this Court, applying the 2006 Sentencing Guidelines, sentenced the defendant to 292 months imprisonment for conspiring to distribute and possession with intent to distribute at least 30 kilograms of heroin in violation of 21 U.S.C. § 846. The Court found that the defendant's Base Offense Level was 38 pursuant to § 2D1.1.(c)(1), which at the time mandated a Base Offense Level of 38 for any amount of heroin involved in the offense that exceeded 30 kilograms. The Court enhanced the Offense Level four levels pursuant to § 3B1.1(a) for the defendant's leadership role in the offense, but reduced the Offense Level three levels for the defendant's acceptance of responsibility pursuant to § 3E1.1(a) & (b). Thus, the Court concluded that the defendant's Offense Level was 39 with a Criminal History Category of II, and the applicable Guidelines range was 292 to 365 months.

The defendant's sentence has not been reduced by the recent amendment to the Guidelines because the amount of heroin involved in the offense places the defendant at the same Base Offense Level of 38. At the sentencing hearing, the Government argued that the defendant was responsible for hundreds of kilograms of heroin. (Tr., Dkt. No. 167 at 18). The Court

adopted the findings of fact in the Pre-Sentence Report ("PSR"), which included a finding that the defendant, according to the Government's estimate, was responsible for conspiring to distribute between 400 and 500 kilograms of heroin. (PSR ¶¶ 72, 81). See § 2D1.1.(c)(1) (mandating a Base Offense Level of 38 for 90 kilograms or more of heroin). The defendant's enhancement and reduction for leadership role and acceptance of responsibility, respectively, remain unchanged. See U.S.S.G. §§ 3B1.1(a), 3E1.1. The defendant's adjusted Offense Level remains 39, and with his Criminal History Category of II, it produces a Guideline Sentencing Range of 292 to 365 months.

"Because [the defendant's] applicable Guideline range remains the same under the amended Guidelines as it was when he was sentenced, the Court lacks authority to grant a reduction of sentence under 18 U.S.C. § 3582(c)(2)." United States v. Williams, No. 98cr834 (JFK), 2013 WL 3778808, at *4 (S.D.N.Y. July 19, 2013); see United States v. Mock, 612 F.3d 133, 137 (2d Cir. 2010) (per curiam); see also U.S.S.G. § 1B1.10(a)(2)(B).

Therefore, the Court will not *sua sponte* reduce the defendant's sentence. The defendant is of course able to file any appropriate motion and bring any relevant facts or law to the Court's attention.

SO ORDERED.

**Dated: New York, New York
April 25, 2016**

_____/s/_____
John G. Koeltl
United States District Judge